IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.1.2006

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

W.P.No.19432 of 1997

1. Ayyanar
2. Perumal .. Petitioners

vs.

1. The Chairman,
   Tamil Nadu Electricity Board,
   Anna Salai,
   Madras-600 002.

2. The Asstt. Executive Engineer,
   Operation & Maintenance-Town,
   Tamil Nadu Electricity Board,
   CAEDC,
   Madurantakam-603 306. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorari, to call for the records relating to the proceedings of the second respondent dated 5.12.1997 made in Letter No.AEE/O & M/Town/MKM/F6/D 393/97, dated 5.12.1997 and quash the same.

For petitioners : Mr.M.S.Subramanian
For respondents: Mr.G.Vasudevan

ORDER

The writ petition has been filed challenging the show cause notice issued by the second respondent-Assistant Executive Engineer.

2. The first petitioner is the brother of the second petitioner. The case of the first petitioner is that he is running a Rice Mill in Madurantakam Village and he is the consumer of electricity under the Tamil Nadu Electricity Board; there was no complaint whatsoever since 1990 when the Unit was put to operation; a new building was constructed in August 1997 and machineries were installed to establish a modern Rice Mill with higher load of 67 H.P. as against the existing load of 30 H.P; the officers of the respondents-Electricity Board have been regularly inspecting the Mill and there was no complaint of irregularity; that on 9.11.1997, the first petitioner had given a

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complaint to the Electricity Board that the wire from the electric post to the Mill was burnt; similar complaints were given on several occasions previously; on 14.11.1997, an inspection was made by the authorities and the damaged wire was removed from the Meter Box in the Rice Mill to the entire length upto the electric post and the same was replaced with a new wire; there was no supply of current for the period 9.11.1997 to 14.11.1997; subsequently, Assistant Executive Engineer (O & M) inspected the service connection on 26.11.1997 and the reading in the Meter was recorded; on 27.11.1997 around 10.20 a.m., the Assistant Executive Engineer visited the Rice Mill premises and represented that they are going to correct the Meter and the first petitioner informed them that the Meter was in good condition and did not require any repair; the Meter was inside the box which was sealed; however, the authorities proceeded to remove the two seals in the box and attempted to remove the seal on the Meter; the first petitioner requested the officers to issue an order in writing about the removal of the seal from the Box; a letter was given by the authorities; on the next day, the Junior Engineer, in the absence of the first petitioner, retrieved the above referred letter from the first petitioner's wife and on 28.11.1997, the first petitioner's wife was asked to sign in a sheet of paper which was not read out to her and the licence was taken from her custody on the same day; a notice dated 29.11.1997 was issued by the Assistant Executive Engineer calling upon the petitioners to show cause as to why action should not be taken for tampering with the Meter seals and for committing theft of energy; the petitioners submitted a detailed reply by letter dated 6.12.1997, denying all the allegations; in the meantime, the impugned show cause notice was issued on 5.12.1997, whereby the authorities determined the loss caused by the petitioners at a sum of Rs.8,86,534/- and also called upon the petitioners to appear before the Executive Engineer on 20.12.1997 for enquiry and represent the case against the various charges levelled in the show cause notice.

3. The gist of the charge in the show cause notice is that on inspection, it was found that there was theft of energy by removing the seal of the C.T. Meter and the top cover and thereafter the Meter readings were tampered to show lower consumption of electricity and the electricity so drawn was used for running the Rice Mill and by committing the said offence, the petitioners had dishonestly abstracted, consumed and used energy with intent to defraud the Electricity Board and cause revenue loss; it is stated in the impugned show cause notice that "The above said illegal extraction, consumption and use of energy is punishable under Section 39(1) of the Indian Electricity Act, 1910 / 39-A of the Indian Electricity Act, 1910, 44 (1)(c) of the Indian Electricity Act, 1910 / Rule 138 of the Indian Electricity Rules, 1956. Prima facie evidence like a bit of wire/a stick/a string/counterfeit seals found and seized by the inspecting team would prove that there was theft in your service/illegal restoration of the disconnected service."

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4. The first petitioner submits that his brother received the said notice only on 18.12.1997 and as the first petitioner was away, he could not be contacted and therefore, the first petitioner did not appear on 20.12.1997. It is stated by the petitioners that except the report of the Assistant Executive Engineer and the mahazar, the statements recorded and other documents were not made available. The petitioners also contest the calculation made in the impugned show cause notice with regard to the demand made. The petitioners' contention is that the determination of the amount demanded in the show cause notice is arbitrary and not commensurate with the consumption during the relevant period; the petitioners also dispute the allegation that the seal was tampered by them; that the seal was in-tact when the officers inspected the premises on 27.11.1997; that the officers obtained signatures from the first petitioner's illiterate wife in his absence; that at the earliest point of time, in reply dated 6.12.1997, the petitioners have denied theft of energy; the further claim of the petitioners is that the correctness of the Meter cannot be arbitrarily decided by the Assistant Executive Engineer and it can be done only by the electrical Inspector and the show cause notice is bereft of report by the electrical inspector and hence, the claim is erroneous, unreasonable and arbitrary. According to the petitioners, the whole proceedings of the authorities are in violation of the principles of natural justice, arbitrary and capricious and therefore, the petitioners filed this writ petition.

5. The writ petition was admitted on 29.12.1997 and an order of interim stay was also granted, and subsequently it was extended and ultimately, the order of interim stay was made absolute on 1.9.2003.

6. A counter affidavit has been filed by the respondents denying all the averments made in the writ petition. The respondents-Electricity Board contend that the petitioners did not participate in the proceedings in spite of several opportunities and the issue is only at the stage of show cause notice. Further, in view of various factual disputes raised in the writ petition, the respondents pleaded that the remedy under Article 226 of the Constitution of India will not be available to the petitioners and sought for dismissal of the writ petition.

7. The counter affidavit has been refuted by way of reply affidavit dated 22.2.2005 filed by the petitioners on several factual aspects which will not be necessary to be dealt with at this point of time.

8. From the narration of events which lead to the issue of the show cause notice, it is clear that the writ petitioners have approached this Court at the stage of show cause notice without appearing before the authorities. Most of the issues raised by the petitioners are disputed questions of fact, which would require a

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detailed enquiry and examination of witness. This can be done only before the authority who has issued the show cause notice.

9. Courts should be reluctant in interfering at the stage of show cause notice in cases of this nature. There are several allegations made, disputed questions of facts urged by the petitioners and this Court, in exercise of powers under Article 226 of the Constitution of India, will not be the proper forum to analyse the merits of the allegations and go into the factual disputes. It is for the authorities under the statutue to decide the issue on merits. In this connection, a few judgments of the Apex Court as well as this Court are worth-mentioning, where it has been explicitly stated that normally, the writ Court, exercising its power under Article 226 of the Constitution of India, will not interfere at the stage of show cause notice as laid down in:

(i) 2005 (2) M.L.J. 40 (Division Bench of the Madras High Court) (The Manager, Silver Cloud Estate, Gudalur, The Nilgiris vs. Plantation Labour Association (AITUC), Coonoor, represented by its Secretary, T.Balakrishnan and another),

(ii) AIR 2004 SC 1467 (Special Director vs. Mohd. Ghulam Ghouse),

(iii) JT 1995 (8) S.C. 331 (Executive Engineer, Bihar State Housing Board vs. Ramesh Kumar Singh) and

(iv) 2005 (2) M.L.J. 44 (1) (Division Bench of the Madras High Court) (N.Kailasam vs. The Bar Council of India represented by its Chairman, New Delhi and others) ,

and further, when the disputed questions of fact are involved, it cannot be decided in the proceedings under Article 226 of the Constitution of India, as laid down in:

(i) 2005 (1) C.T.C. 481 (Division Bench of the Madras High Court) (The Commissioner, Coimbatore Corporation vs. A.Thangavelu) and

(ii) AIR 1976 SC 386 (D.L.F. Housing Const. Ltd. vs. Delhi Municipal Corporation).

10. In the present case, the authorities have proceeded as per law and issued the show cause notice where several allegations are made and they are disputed by the petitioners. Without pursuing the statutory proceedings, the writ petitioners have approached this Court and also obtained interim orders. Since the challenge the writ petition is only at the stage of show cause notice, this Court is unable to accept the petitioners' contention in the writ petition and to go into the merits of the case involving the disputed questions of fact, and thereby, usurp the jurisdiction of the respondents.

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11. Learned Standing Counsel for the respondents/Electricity Board would however submit that the petitioners should be directed to take part in the show cause notice proceedings and they can avail the opportunity and put-forth their plea on merits.

12. In view of the above discussion, the petitioners are directed to appear before the Executive Engineer, Madurantakam, Chenglepet District and make their submissions on merits, with the relevant documents and materials in support of their case. The Executive Engineer shall afford a personal hearing before deciding the matter and decide the issue on merits and in accordance with law, within a period of eight weeks from the date of receipt or production of a copy of this order. The relevant and necessary documents which are available with the Electricity Board may be furnished to the petitioners on request.

13. In the result, the writ petition is dismissed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Madras-600 002.

2. The Asstt. Executive Engineer,
Operation & Maintenance-Town,
Tamil Nadu Electricity Board,
CAEDC,
Madurantakam-603 306.

3.The Executive Engineer, (TNEB)
CAEDC Madurantakam, Chengleput District.

+1cc to Mr.M.S.Subramanian, Advocate Sr 1920
+1cc to MR.G.Vasudevan, Advocate Sr 2277

JE (CO)
km/27.1.

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